

The opinion of the High Court was delivered by

PRIGOT, J.—It appears to us clear that the Small Cause Court has jurisdiction in such a case as the present.

By the Small Cause Court Act, jurisdiction is expressly conferred on Small Cause Courts, in cases the facts of which are such as those appearing here; and all that has to be considered in this case is, whether there is any provision in the Army Act of 1881 which takes away that jurisdiction.

We are of opinion that there is none. The doubt which has been felt in the matter arises from its being apparently supposed, that the words “shall be cognizable” in s. 151 of the Army Act, mean “shall be cognizable only.”

We are of opinion that there is nothing in that section of the Army Act, either in express words or by reasonable inference, to lead us to believe that it was the intention of the legislature in that section to affect the jurisdiction of the Small Cause Courts. We therefore answer the question referred to us in the affirmative.

We think it desirable to add that the discretion of the Small Cause Courts in giving leave to sue under s. 18 of Act XV of 1882 is one that ought to be only very cautiously exercised, in cases such as the one before us.

Attorneys for the plaintiffs: Messrs. *Sanderson & Co.*

T. A. P.

1886

WALLIS
v.
TAYLOR.

ORIGINAL CIVIL.

Before Mr. Justice Trevelyan.

KRISTO BHABINEY DOSSEE (PLAINTIFF) v. ASHUTOSH BOSU
MULLICK AND ANOTHER (DEFENDANTS.)*

1886

May 12.

Hindu Law—Partition—Widow's Share.

The plaintiff, the widow and heiress of one *N*, brought a suit for partition of the estate of one *R* (her late husband's father) against *A*, a son of her late husband's half-brother, and *K* the widow of *R*, the parties to the suit being the only members of the family then alive.

Held, that *A* took a one-half share in the estate, the other half share being divisible between the widow of *R* and the widow of *N*. *Calichurn Mullick v. Janova Dossee* (1) followed.

* Original Civil No. 63 of 1886.

(1) 1 Ind. Jur. N. S., 284.

1886

KRISTO
BHABINEY
DOSSEE
v.
ASHUTOSH
BOSU
MULLICK.

THIS was a suit brought by one Kristo Bhabiney Dossee, the widow of one Nilmadhub Bosu Mullick, for partition of a house and premises formerly belonging to one Ram Chunder Bosu Mullick, the father of her late husband.

The following table shows the position of the parties to the suit :—

RAM CHUNDER BOSU MULLICK.		
m. 1 DOORGA MONRY DOSSEE died 1836		
m. 2 KRISTO MONRY DOSSEE, defendant.		
BY FIRST WIFE		BY SECOND WIFE.
PREONATH BOSU MULLICK		NILMADHUB BOSU MULLICK
m. MOKHODA DOSSEE		m. KRISTO BHABINEY DOSSEE
ASHUTOSH BOSU MULLICK		Plaintiff.
Defendant.		

The members of the family alive at the date of suit were Kristo Bhabiney Dossee (the plaintiff), Ashutosh Bosu (defendant No. 1) a grandson of Ram Chunder Bosu Mullick by his first wife, and Kristo Mohiney Dossee (defendant No. 2) the widow of Ram Chunder Bosu Mullick.

The plaintiff sought partition of the house hereafter mentioned and stated that Ram Chunder Bosu Mullick died in 1856, leaving him surviving two sons by different wives, viz., Preonath Bosu Mullick by his first wife, and Nilmadhub Bosu Mullick by his second wife Sreemutty Kristo Mohiney Dossee; that Ram Chunder was at his death possessed of a certain house situate at No. 94, Hurry Ghose's Street in Calcutta; and that after his death Preonath Bosu Mullick and Nilmadhub Bosu Mullick inherited this house, enjoying it in equal shares up to the date of their respective deaths.

That Preonath Bosu Mullick died on the 23rd November 1872, intestate, leaving him surviving a son named Ashutosh Bosu Mullick, and a widow named Sreemutty Mokhoda Dossee; that Nilmadhub Bosu Mullick died on the 29th July 1875, intestate, and without issue, leaving a widow Kristo Bhabiney Dossee as his sole heiress.

The suit as originally framed was brought against Ashutosh Bosu Mullick alone, but subsequently Kristo Mohiney Dossee, the widow of Ram Chunder Bosu Mullick, applied to be added as a party defendant, and the Court, on the authority of the case

of *Torit Bhushun Bonnerjee v. Taraprosunno Bonnerjee* (1) made an order directing her to be added as a party.

The defendants were all willing that a partition should take place, and the only matter discussed at the hearing was as to the shares to be allotted to the different parties.

Mr. *Handley* for the plaintiff referred to the decree in the case of *Torit Bhushun Bonnerjee v. Taraprosunno Bonnerjee* and relied on the way in which the decree in that suit had directed the property to be divided into four parts, allotting to the plaintiff and Taraprosunno, and the committee of Kaliprosunno each a one-fourth share, and to the two widows the remaining fourth share between them; but pointed out to the Court the case of *Cali Churn Mullick v. Janova Dossee* (2) which was against him.

Mr. *Sale* for Kristó Bhabiney Dossee.

Ashutosh Bosu Mullick appeared in person.

TREVELYAN, J.—I do not think that there is in reality any conflict of authority in this case. Mr. Justice Phear's decision in *Cali Churn Mullick v. Janova Dossee* (2) was based upon three decisions of the Supreme Court. Mr. Justice Phear's decision seems to have been accepted as an authority with regard to the Bengal school of law in the recent case of *Damoodur Misser v. Senabutty Misrain* (3). According to Mr. Justice Phear's decision, in a partition between sons by different wives, the respective mothers are only entitled to share equally with their own sons, the aggregate of the shares which an equal division among the brothers allots to those sons, or in other words, the property must be first divided into as many shares as there are sons. Each widow then shares equally with each of her sons the portion allotted to her sons. I have been referred to a decree passed by Mr. Justice Wilson on the 21st of July 1880 in a case of *Torit Bhushun Bonnerjee v. Taraprosunno Bonnerjee*. In that case one Dhurm Das Bonnerjee left him surviving the plaintiff, two other sons, and two widows, one of them the mother of the plaintiff, and the other the mother of the two other sons. Mr. Justice Wilson ordered the property

1886

KRISTO
BHABINEY
DOSSEE
" "
ASHUTOSH
BOSU
MULLICK.

(1) I. L. R., 4 Calc., 756.

(2) 1 Ind. Jur., 284.

(3) I. L. R., 8 Calc., 542.

1886 to be divided into four parts, giving one of such parts to each of the three sons, and the fourth part to the two widows.

KRISTO
BHABINNEY
DOSSEE
v.
ASHUTOSH
BOSU
MULLICK.

In that case, however, it does not appear that there was any contest or argument.

I think that I must follow Mr. Justice Phear's decision, and declare that the male defendant is entitled to a half share of the property.

As I understand it, the plaintiff does not dispute the right of her mother-in-law to a share on partition. The other half will therefore be divided between the plaintiff and the female defendant in equal shares.

Suit decreed.

Attorneys for plaintiff: Messrs. *Harris & Simmons.*

Attorney for second defendant: *Baboo Nobodeep Chunder Roy.*

T. A. P.

Before Mr. Justice Trevelyan.

1886 BIPIN BEHARY DAW (PLAINTIFF) v. SREEDAM CHUNDER DEY
May 25. (DEFENDANT.)*

Evidence Act (I of 1872), s. 32, cl. 5 and ill. (i.)—Hearsay Evidence—Pedigree—Proof of birth—Statement of deceased father.

In a suit on a promissory note, to which the only defence was minority, a statement made by the defendant's father, (who died before proceedings by way of suit had been contemplated) to a witness as to the age of his son, held to be inadmissible as evidence of the age of the defendant in support of his defence.

THIS was a suit brought on a promissory note. The only defence was that the defendant was a minor at the time the note was signed.

During the course of the defendant's case, one Motilal Day was called as a witness and deposed as follows: "I took Sreedam in 1876 to the Metropolitan Institute for the purpose of getting him admitted. . . . I did not know personally what Sreedam's age was when I took him to the Institute; whilst there his age was mentioned. At the time of his admission a statement of his age was given to me by his father."

Sreedam's father admittedly died after this event and before legal proceedings had been contemplated.

* Suit No. 331 of 1885.